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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/693,206	10/23/2003	Anthony Cubb	RJT-1098-US	2309

7590 05/17/2005  
Anthony Cubb, M.D.  
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Kingwood, TX 77346

EXAMINER
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KASZTEJNA, MATTHEW JOHN

ART UNIT	PAPER NUMBER
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3739

DATE MAILED: 05/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/693,206	CUBB, ANTHONY	
	<b>Examiner</b>	<b>Art Unit</b>	
	Matthew J Kasztejna	3739	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 23 October 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4 and 6-15 is/are rejected.
- 7) ☒ Claim(s) 5 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10/23/03 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION*****Drawings***

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "18" has been used to designate both the off/on button and the viewing port. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Objections***

Claim 1 is objected to because of the following informalities: At the beginning and end of Line 4, the words "and" appear they should read "end", so as to read "distal portion end" and "proximal portion end". Furthermore, Line 7 has a period making claim 1 consist of more than one sentence. Appropriate correction is required.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which the subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4, 6-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,840,013 to Lee et al. in view of U.S. Patent No. 5,377,668 to Ehmsen et al.

**In regards to claims 1, 11 and 14,** Lee et al. disclose an endotracheal intubation device 1130 comprising: an optical housing assembly 36 including an image conducting system having a distal portion end extending from a first end of the optical housing assembly, and a proximal portion end extending from a second end of the optical housing assembly through a positional viewing mechanism 98 and the positional viewing mechanism having at its second end a viewing system wherein the image conducting system optically communicates with the viewing system through the positional viewing mechanism (see Col. 11, Lines 5-10); a scabbard 1138 sized to sealably receive a portion of the first end of the optical housing assembly and the image conducting system, wherein the scabbard comprises a curved structure having a terminal edge surface and a plurality of spaced conduits extending through the scabbard wherein: (i) a first one 1206 of the conduits extends longitudinally through the scabbard and has at least one optically open end at the terminal edge surface of the scabbard, (ii) a second one 1146 of the conduits extends along an outer surface portion of the scabbard and defines an open channel that is sized to removably receive an endotracheal tube and comprises two open ends, one of which opens onto the terminal edge surface of the scabbard to provide a predictable point and direction for insertion of the endotracheal tube, and (iii) a third one 1210 of the conduits extends longitudinally

through the scabbard and comprises two open ends, a first end of which opens onto the terminal edge surface of the scabbard and a second end of which being adapted to for connection to a vacuum or supplemental oxygen providing source (see Col. 16, Lines 37-45 and Fig. 1); and a power source 115 electrically connected to the image conducting system to provide an illuminated area at the terminal edge surface of the scabbard from the distal portion of the image conducting system and for transmission of images from the illuminated area to the positional viewing mechanism located at the proximal end of the image conducting system (see Col. 10, Line 56 – Col. 11, Line 50). However, Lee et al. is silent with respect to the positional viewing mechanism pivotally attached at a first end of the positional viewing mechanism to the second end of the optical housing assembly. Ehmsen et al. teach of an analogous endoscopic device constructed with one or more of a pivoted eyepiece (see Fig. 1 and Col. 4, Lines 20-37). It would have been obvious to one skilled in the art at the time the invention was made to include a pivotal eyepiece in the apparatus of Lee et al. so the relative orientations of the body axis and the eyepiece axis may be adjusted to suit the convenience of one using the eyepiece to observe an operating site as taught by Ehmsen et al. (see Col. 4, Lines 3-20).

**In regards to claim 2,** Lee et al. disclose an endotracheal intubation device wherein the scabbard is formed from a polymer so as to comprise an intubation blade like structure for inserting into a patient's mouth, formed so as to generally comprise the shape of the anatomical contour of a patient's tongue (see Col 5, Lines 16-24 and Col. 7, Lines 49-55).

**In regards to claim 3**, Lee et al. disclose an endotracheal intubation device having a lens sealingly disposed over the open end of the first one of the conduits on the terminal edge surface, and illuminatingly in communication with the distal end of the image conducting system (see Fig 11j).

**In regards to claim 4**, Lee et al. disclose an endotracheal intubation device wherein the power source electrically connected to the image conducting system is a battery 115 (see Col. 11, Lines 34-38).

**In regards to claim 6**, Lee et al. disclose an endotracheal intubation device wherein the open channel is capable of being constructed to be partially obstructed by a plurality of spaced-apart, interdigitated fingers so as to firmly, but releasably accommodate a plurality of sizes of the endotracheal tube (see Col. 8, Lines 45-60).

**In regards to claim 7**, Lee et al. disclose an endotracheal intubation device wherein the image conducting system is elongate and flexible (see Col. 7, Lines 49-55).

**In regards to claim 8**, Lee et al. disclose an endotracheal intubation device wherein the image conducting system 106 is an optical fiber bundle 109 (see Col. 11, Lines 1-10).

**In regards to claims 9-10**, Lee et al. disclose an endotracheal intubation device wherein the image conducting system is a digital conducting system (see Col. 11, Lines 22-28).

**In regards to claim 12**, Lee et al. disclose an endotracheal intubation device comprising a port arranged at the first end of the scabbard in fluid flow communication with the second conduit (see Fig. 6).

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**In regards to claim 13**, Lee et al. disclose an endotracheal intubation device wherein the optical housing assembly has an exterior surface with curvature to effectively accommodate the hand grip of an operator (see Col. 9, Lines 34-60).

**In regards to claim 15**, Lee et al. disclose an endotracheal intubation device wherein the scabbard is detachable from the first end of the optical housing assembly and is replaceable or disposable (see Col. 7, Lines 53-55).

***Allowable Subject Matter***

Claim 5 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Patent No.5,665,052 to Bullard

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew J Kasztejna whose telephone number is (571) 272-6086. The examiner can normally be reached on Mon-Fri, 8:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda C.M. Dvorak can be reached on (571) 272-4764. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MJK

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5/13/05

  
BEVERLY M. FLANAGAN  
PRIMARY EXAMINER